



1 Subject to the approval of this Court, the parties hereby stipulate to the  
2 following Protective Order (hereafter, "Order"):

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4 **GOOD CAUSE STATEMENT**

5 1. The subject matter of this action involves the production,  
6 manufacturing, marketing, and sale of certain products by the parties herein.

7 2. In connection with discovery in this action, the parties and third-party  
8 witnesses may produce confidential documents, things, materials, and testimony  
9 relating to the products manufactured, marketed or sold. Absent a protective order,  
10 production of the following categories of information (hereafter, "Confidential  
11 Information") would prejudice or harm the producing party:

- 12 a. The process by which the specific products were developed and  
13 tested, and the formulation, components, and methods used to  
14 produce and manufacture the products. Absent a protective order,  
15 competitors could use this information to unfairly compete by  
16 copying or modifying the products. Much of this is proprietary or  
17 trade secret information, and disclosure could destroy trade secret  
18 protection or reduce the value of the information.
- 19 b. The methods and activities used to market the products, the  
20 identity of licensees and customers, and the terms of licenses and  
21 sales. Absent a protective order, competitors could use this  
22 information to unfairly compete by copying or countering a  
23 party's marketing, licensing, pricing and sales activities. Much of  
24 this is also proprietary or trade secret information, and disclosure  
25 could destroy trade secret protection or reduce the value of the  
26 information.
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1           3.     The parties in this action are or could become competitors of each other  
2 in the market for the products. Therefore, absent a protective order preventing  
3 disclosure of certain information identified in Paragraph 2(a) and (b), above  
4 (hereafter, "Attorneys' Eyes Only Information"), to the parties themselves, the  
5 parties will suffer the same prejudice and harm described in Paragraph 2(a) and (b).

6  
7                                   **STIPULATED PROTECTIVE ORDER**  
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9           4.     **Confidential Information:** Certain information to be produced during  
10 discovery in this litigation contain trade secrets and other confidential research,  
11 development, and commercial information. This information (regardless of how  
12 generated, stored or maintained) is confidential such that it qualifies for protection  
13 under standards developed under F.R.Civ.P. 26(c). This information is hereinafter  
14 referred to as "Confidential Information."

15           Information (regardless of how generated, stored or maintained) that is  
16 extremely sensitive "Confidential Information," the disclosure of which to another  
17 party or nonparty would create a substantial risk of serious injury that could not be  
18 avoided by less restrictive means, is hereinafter referred to as "Confidential --  
19 Attorneys' Eyes Only Information".

20           Except as otherwise indicated below, all documents that the producing party  
21 designates as "Confidential Information" or "Confidential -- Attorneys' Eyes Only  
22 Information" and that is produced by the producing party to plaintiffs, other  
23 defendants, or to their respective attorneys, consultants, agents or experts in this  
24 action shall be considered protected information and given confidential treatment as  
25 described below.

26           5.     **Confidential Documents:** All written or electronic information or  
27 materials in any form or format and all other tangible items produced or information  
28 disclosed in this action, whether pursuant to discovery demands, voluntarily, or

1 otherwise, which the producing parties designate as “Confidential Documents” shall  
2 be disclosed only to:

- 3 a. The named plaintiffs and defendants in this action, subject to  
4 Paragraph 6 below;
- 5 b. Any counsel for plaintiffs and defendants in this action who has  
6 entered an appearance in this case; attorneys employed by or  
7 members of said counsel’s firm; paralegals employed by said  
8 counsel’s firm; and secretarial or clerical personnel employed by  
9 said counsel’s firm when operating under said counsel’s  
10 supervision and control;
- 11 c. Certified court reporters acting as such;
- 12 d. Independent experts and consultants retained by a party for the  
13 preparation or trial of this case provided, however, that any such  
14 consultant or expert signs an Acknowledgement, in the form  
15 attached hereto as Exhibit A; and
- 16 e. Judges and court personnel of the United States District Court,  
17 Central District of California; and, to the extent necessary to  
18 prosecute any appeals of this action, the Justices and court  
19 personnel of the Court of Appeal.

20 6. **Confidential -- Attorneys’ Eyes Only Documents**: All documents  
21 produced or information disclosed in this action, whether pursuant to discovery  
22 demands, voluntarily, or otherwise, which the producing parties designate as  
23 “Confidential -- Attorneys’ Eyes Only Documents” shall be disclosed only to:

- 24 a. Any outside counsel for plaintiffs and defendants in this action  
25 who has entered an appearance in this case and national coordinating  
26 counsel; attorneys employed by or members of said counsel’s firm;  
27 paralegals employed by said counsel’s firm; and secretarial or clerical  
28

1 personnel employed by said counsel's firm when operating under said  
2 counsel's supervision and control;

3 b. Any parties' respective in-house attorneys, if they have  
4 responsibility for the prosecution or defense of this action, provided that  
5 any such in-house attorney does not provide counsel to the Company's  
6 business related to any subject matter contained in the documents  
7 covered by this paragraph and further provided that the in-house  
8 attorney signs an Acknowledgement, in the form attached hereto as  
9 Exhibit A.

10 c. Certified court reporters acting as such;

11 d. Independent experts and consultants retained by a party for the  
12 preparation or trial of this case provided, however, that any such  
13 consultant or expert signs an Acknowledgement, in the form attached  
14 hereto as Exhibit A; and

15 e. Judges and court personnel of the United States District Court,  
16 Central District of California; and, to the extent necessary to prosecute  
17 any appeals of this action, the Justices and court personnel of the Court  
18 of Appeal.

19 7. Under no circumstances may any Confidential Document, any  
20 Confidential -- Attorneys Eyes Only Document, or any information contained  
21 therein, be disclosed in any other lawsuit (except pursuant to Paragraph 25, which  
22 sets forth a procedure regarding the production of documents pursuant to a lawful  
23 subpoena).

24 8. All copies of any Confidential Document and/or Confidential -- Attorneys  
25 Eyes Only Document shall be subject to the terms of this Order.

26 9. Before being given access to any of the Confidential Documents,  
27 Confidential -- Attorneys Eyes Only Documents, or any information contained therein,  
28 each person described in any of the paragraphs 2(a) through 2(c) and 3(a) through 3(c)

1 above, shall be advised of the terms of this Order, shall be given a copy of this Order, and  
2 shall sign a copy of Exhibit A attached hereto, thereby agreeing to be bound by the terms  
3 of this Order and to submit to the jurisdiction of this Court as to matters concerning  
4 compliance with this Order. Counsel for the receiving party shall maintain all copies of  
5 the referenced Exhibit A signed in accordance with this paragraph until further order of  
6 this Court and shall, within a reasonable time after receipt of any signed Exhibit A,  
7 provide a copy thereof to counsel for the producing party, except for an Exhibit A signed  
8 by a consulting, undesignated expert of a party.

9       10. The information to be considered as “Confidential Information” or  
10 “Confidential -- Attorneys’ Eyes Only Information” and disclosed only in  
11 accordance with the terms of this Order shall include, without limitation, all trade  
12 secrets and other confidential research, development and commercial information or  
13 information related to private matters of individuals supplied by the producing party  
14 in response to the demands or requests of plaintiffs and/or defendants.  
15 Notwithstanding the foregoing, “Confidential Information” and “Confidential --  
16 Attorneys’ Eyes Only Information” shall not mean information or documents  
17 produced or disclosed that are or become, without violating this Order, and apart  
18 from production or disclosure in connection with litigation, a matter of public record  
19 or publicly available by law or otherwise.

20       11. Counsel for the producing party may designate documents as  
21 “Confidential” or “Confidential -- Attorneys’ Eyes Only” by affixing thereon an  
22 appropriate stamp marked “Confidential” or “Confidential -- Attorneys’ Eyes Only,”  
23 which stamp shall also indicate the party making that designation. This designation  
24 shall be made prior to making copies of documents available to counsel. The  
25 designation shall be made on the document copies selected for production by  
26 producing counsel as they are finally delivered or made available to the opposing  
27 party or parties.  
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12. “Confidential Documents” and/or “Confidential -- Attorneys Eyes Only Documents” produced by a party in this action in response to discovery requests may be produced for counsel’s inspection at the offices of counsel for that producing party. Alternatively, the producing party may at its own election and at the expense of the requesting party, copy documents selected by the requesting party and ship the copies or documents provided electronically on CD or DVD to the site designated by the requesting party’s counsel. Prior to or simultaneous with the shipping of the copies to the requesting party, the producing party will designate in writing which, if any, of the documents selected by that party the producing party believes should continue to be “Confidential Documents” or “Confidential -- Attorneys Eyes Only Documents,” along with the documents not selected for copying.

13. Before documents are made available by the producing party at its principal place of business pursuant to paragraph 9, counsel for the inspecting party agrees to advise the producing party in writing of the name and relationship to this lawsuit of any person intended by that party, or by that party’s counsel, to assist with the inspection of the producing party’s documents at its principal place of business, including requesting counsel, requesting counsel’s employees, and all identified experts immediately prior to this inspection.

14. The parties acknowledge that Confidential Documents and/or Confidential - Attorneys Eyes Only Documents might be used or disclosed during depositions. Whenever Confidential Documents and/or Confidential - Attorneys Eyes Only Documents are to be disclosed or discussed at a deposition, the party that intends to use such document shall give five (5) business days written notice to the producing party. To protect the confidentiality of this information, prior to the commencement of any such deposition, all persons present at the deposition who have not previously agreed to the terms of this Order shall be asked to review and agree to the Order and sign a copy of Exhibit A before the deposition begins. Any person who has not signed Exhibit A prior to the commencement of the deposition shall not be permitted to attend or participate in

1 any portion of the deposition in which any Confidential Document, Confidential --  
2 Attorneys Eyes Only Document, or any information therein is to be disclosed or  
3 discussed. In the event that any person, including an attorney representing a party,  
4 objects to being excluded from the deposition pursuant to this paragraph, or objects to  
5 any other person being excluded from the deposition pursuant to this paragraph, the  
6 deposition shall be continued until such time as the Court issues an order resolving the  
7 dispute. The producing party's counsel shall maintain all copies of the referenced  
8 Exhibit A signed in accordance with this paragraph until further order of this Court and  
9 shall make copies thereof available to any other counsel in this case upon reasonable  
10 written request.

11 15. For any deposition in which any Confidential Document, Confidential --  
12 Attorneys Eyes Only Document, or any information contained therein is disclosed, the  
13 court reporter shall prominently mark the cover page of the transcript of such deposition  
14 as "Confidential - Subject to Protective Order." Videotapes of any such deposition shall  
15 also be prominently marked by the videographer as "Confidential-Subject to Protective  
16 Order." The provisions of this Protective Order shall thereafter apply to all pages of a  
17 deposition transcript so marked. Any person in possession, custody or control of such a  
18 deposition transcript shall attach a copy of the written notification to the face of that  
19 transcript.

20 16. Any Confidential Document and/or Confidential -- Attorneys Eyes Only  
21 Document used as an exhibit or otherwise disclosed in any deposition in this case shall  
22 be bound in a separate volume of confidential exhibits to the transcript.

23 17. Any party may designate as "Confidential Documents" or "Confidential  
24 -- Attorneys Eyes Only Documents" portions of transcripts of depositions, or exhibits  
25 thereto, containing information deemed confidential, by making such designation at  
26 the deposition of a deponent or upon examination of a transcript of such deposition.  
27 Counsel will provide for the separate binding of the designated portions  
28 "Confidential" or "Confidential -- Attorneys' Eyes Only." Counsel may designate



1 non-documentary material as “Confidential” or “Confidential -- Attorneys’ Eyes  
2 Only” by informing all counsel of that designation at the time of disclosure of such  
3 information.

4 18. This Order shall not apply to the disclosure of Confidential Documents,  
5 Confidential -- Attorneys Eyes Only Documents, or the information contained  
6 therein at the time of trial, through the receipt of Confidential Documents and/or  
7 Confidential -- Attorneys Eyes Only Documents into evidence or through the  
8 testimony of witnesses. The closure of trial proceedings and sealing of the record of  
9 a trial involve considerations not presently before the Court. These issues may be  
10 taken up as a separate matter upon the motion of any of the parties.

11 19. If a party intends to disclose any Confidential Document, Confidential --  
12 Attorneys Eyes Only Document, or any information contained therein during the trial  
13 of this case, that party shall give written notice to counsel for the producing Party of  
14 such intent and shall identify such Confidential Documents, Confidential --  
15 Attorneys Eyes Only Document, or information to be so disclosed at least forty-five  
16 (45) days before the date this case is set for trial, so that the producing party might  
17 take any steps it deems necessary to protect the confidential nature of any  
18 Confidential Document, Confidential -- Attorneys Eyes Only Document, or any  
19 information contained therein that may be disclosed at trial.

20 20. The parties shall work together to establish procedures to assure continued  
21 confidentiality of any Confidential Document, Confidential -- Attorneys Eyes Only  
22 Document, or any information contained therein to be offered at the trial of this case.

23 21. All “Confidential Documents” and/or “Confidential -- Attorneys Eyes  
24 Only Documents” produced or disclosed in this action shall be used solely for the  
25 purposes of preparation for and the trial of this action. Under no circumstances shall  
26 information or materials covered by this Order be disclosed to anyone other than  
27 those persons set forth in paragraphs 5 and 6 above. All Confidential Documents and  
28 Confidential -- Attorneys Eyes Only Documents shall be maintained under the

1 control of and accounted for by the attorney, party or other entity or person receiving  
2 them. Upon final termination of this case (including all appeals), any attorney, party  
3 or other entity or person receiving any Confidential Document and/or Confidential --  
4 Attorneys Eyes Only Document, unless otherwise agreed to in writing by the  
5 producing party or ordered by the Court, shall promptly (1) return to counsel for the  
6 producing party as identified below, or provide certification of destruction of all  
7 Confidential Documents, Confidential -- Attorneys Eyes Only Documents, and all  
8 documents incorporating information from the Confidential Documents and/or  
9 Confidential -- Attorneys Eyes Only Documents, and all copies made thereof,  
10 including all documents or copies of documents provided by the party to any other  
11 person, other than attorney work product; (2) return or provide certification of  
12 destruction of all DVDs, CDs or other media containing or incorporating  
13 Confidential Documents and/or Confidential -- Attorneys Eyes Only Documents; (3)  
14 return or provide certification of destruction of all Confidential Documents,  
15 Confidential -- Attorneys Eyes Only Documents, and all documents incorporating  
16 information from Confidential Documents and/or Confidential -- Attorneys Eyes  
17 Only Documents, and all copies made thereof, including all documents or copies of  
18 documents provided by the party to any other person, other than attorney work  
19 product that has been stored on any portable media (DVD, CD, USB flash drive,  
20 etc.); (4) provide certification of deletion of Confidential Documents, Confidential --  
21 Attorneys Eyes Only Documents, and all documents containing information from  
22 Confidential Documents and/or Confidential -- Attorneys Eyes Only Documents, and  
23 all copies made thereof, including all documents or copies of documents provided by  
24 the party to any other person from all systems, applications, hard drives, servers,  
25 web-based or other storage repositories of any type; and (5) provide assurance that  
26 no steps will be taken at any time in the future to restore deleted Confidential  
27 Documents and/or Confidential -- Attorneys Eyes Only Documents and all  
28 documents containing information from Confidential Documents and/or Confidential

1 -- Attorneys Eyes Only Documents, and that any inadvertent violation of this  
2 assurance and steps taken to remedy it will be promptly reported to the other party.  
3 The deletion required under subpart (4) of this paragraph shall not require deletion  
4 from backup tapes. Independent experts and consultants retained by a party for the  
5 preparation or trial of this case that have received Confidential Documents and/or  
6 Confidential -- Attorneys Eyes Only Documents shall return or certification of  
7 destruction of all Confidential Documents, Confidential -- Attorneys Eyes Only  
8 Documents, and all documents incorporating information from Confidential  
9 Documents and/or Confidential -- Attorneys Eyes Only Documents, and all copies  
10 made thereof, including all documents or copies of documents provided by the party  
11 to any other person, other than attorney work product provide to their retaining  
12 counsel. Upon receipt of return or certification of destruction of Confidential  
13 Documents and/or Confidential -- Attorneys Eyes Only Documents from such  
14 retained experts or consultants, retaining counsel shall then provide written notice to  
15 counsel for the producing party of return or certification of destruction of documents.

16       22. At any time after the delivery of materials designated "Confidential  
17 Documents" or "Confidential -- Attorneys Eyes Only Documents," counsel for the  
18 receiving party may challenge the confidential designation of any such material (or  
19 portion of such material) within thirty (30) days of receiving any such documents by  
20 providing to counsel for the producing party a written notice of such challenge  
21 identifying each document, transcript, or item of information challenged. Any  
22 challenge will be made in strict compliance with Local Rules 37-1 and 37-2  
23 (including the Joint Stipulation requirement). The notice shall identify the disputed  
24 information and shall state the reason such information should not be accorded  
25 confidential treatment and the facts underlying such reasoning. The confidential  
26 status of the challenged material shall be maintained until final ruling by the Court  
27 on any motion, as well as the final resolution of any appeal from any such rulings.  
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23. Violation by any person of any term of this Order or of the Nondisclosure Agreement shall be punishable as a contempt of court if they knew or should have known of the violation. Any company or corporation that is affiliated with the producing party and produced confidential documents or information responsive to a discovery request in this action shall be a third-party beneficiary of the Nondisclosure Agreement and may pursue all civil remedies available to such parties for breach thereof. Nothing in this Order shall be deemed to require any person or corporation not a party to this action to respond to any discovery request, except as may otherwise be required by law. Nothing in this Order shall prevent or prohibit any party from seeking such additional or further protection as it deems necessary to protect documents or information subject to discovery in this action.

24. This Order is subject to revocation or modification by order of the Court upon written stipulation of the parties, or upon motion and reasonable notice, including opportunity for hearing and presentation of evidence. Moreover, nothing herein and no action taken hereunder shall constitute a waiver or admission that any specific document, material, testimony or thing: (1) is or is not a trade secret or confidential proprietary information; (2) constitutes or does not constitute confidential medical or financial records; or (3) is or is not admissible in evidence at trial or at any hearing.

25. In the event that any recipient of Confidential Documents and/or Confidential -- Attorneys Eyes Only Documents (a) is served with a subpoena or other legal process in another action, or (b) is served with a request or a demand in another action to which he or she is a party, or (c) is served with a request or a demand or any other legal process by one not a party to this case concerning documents subject to this Order, that person (the recipient of "Confidential Documents") shall give prompt written notice of such event to the producing party, and shall object on this basis of this Order to producing or responding to any such request, demand or subpoena. Within fifteen (15) days from the giving of such

1 written notice, the producing party shall advise the person who is to respond to the  
2 subpoena, request, or demand of its position concerning the production of documents  
3 subject to this Order. Thereafter, the producing party shall assume responsibility for  
4 preserving and prosecuting any objection to the request or demand or subpoena. The  
5 person served shall be obligated to cooperate to the extent necessary, to enforce the  
6 terms of this Order. Nothing in this Order shall be construed as authorizing a  
7 recipient of Confidential Documents and/or Confidential -- Attorneys Eyes Only  
8 Documents to disobey a lawful subpoena issued in another action.

9       26. In the event that a party inadvertently produces or discloses any document  
10 or information in this case without intending to waive a claim that it is confidential or  
11 privileged, such production or disclosure shall not be a waiver, in whole or in part, of a  
12 claim of confidentiality or privilege as to any such document or information. Within ten  
13 (10) days after the producing party actually discovers that such production or disclosure  
14 was made, it shall provide written notice to all parties, entities or persons to whom such  
15 production or disclosure was made. All such receiving parties, entities and persons shall  
16 not review, copy or otherwise disseminate or disclose any of the specified documents or  
17 information following receipt of the notice, and shall return the specified documents and  
18 information and all copies thereof within ten (10) days of receipt of the notice. If  
19 appropriate, the producing party promptly will produce properly designated (and, if  
20 necessary, redacted) new versions of the documents.

21       27. Any agreement made as to the entry of this Order and any compliance  
22 therewith shall not be deemed to be a waiver of any right to urge either less protection or  
23 more protection as to any Confidential Document or information contained therein,  
24 including, but not limited to, the right to challenge that such document or information is  
25 not entitled to any protection or should not be disclosed under any circumstances. In the  
26 event of any dispute as to the propriety or correctness of the designation as a Confidential  
27 Document or as a Confidential -- Attorneys Eyes Only Document, the parties shall  
28 attempt to resolve the dispute by negotiation. If negotiations fail to resolve the dispute,

1 the party wishing to challenge the designation may file a motion for an appropriate order.  
2 Any motion brought pursuant to this paragraph will be made in strict compliance  
3 with Local Rules 37-1 and 37-2 (including the Joint Stipulation requirement).

4 28. The terms of this Order shall not terminate at the conclusion of this  
5 litigation, but shall remain in full force and effect. The Court will retain jurisdiction to  
6 enforce this order even after the other matters in this case have been dismissed.

7 29. Any notice required or permitted by this Order shall be given to the  
8 signatories for each party, as appropriate.

9  
10 APPROVED AND SO ORDERED.

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12 Dated: December 31, 2008

A handwritten signature in dark ink, appearing to read "R. N. B. Jr.", is written over a light gray rectangular background.

13 U.S. MAGISTRATE JUDGE  
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**EXHIBIT A**

**ACKNOWLEDGEMENT OF RECEIPT  
AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_ hereby certify that I have read the Protective Order entered by the Court in the above-captioned action and agree to be bound by all of its terms as they apply to me.

I further certify I will fully comply with the Order and all of its terms and restrictions as such shall apply to me. I agree that I shall (i) not disclose Confidential Documents or any information contained therein to anyone other than persons permitted to have access to such material pursuant to the terms and restrictions of the Order, (ii) not use the Confidential Documents or any information contained therein for any purpose other than this litigation, and (iii) maintain the appropriate security as to Confidential Documents or any information contained therein made available to me and restrict access thereto. I further agree that, upon termination of this action, or sooner if so requested, I shall return to counsel for the producing party, all Confidential Documents provided to me, including all paper and electronic copies and excerpts thereof.

I understand that violation of these conditions of the Order may be punishable by contempt of Court and I waive any objection to the Court's jurisdiction in any action to enforce the obligations imposed on me by the Order.

Dated: \_\_\_\_\_